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11 Attorneys for Plaintiff  
12 United States of America

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14 IN THE UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA

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18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 v.  
21  
22 URIEL SOTELO-PATINO,  
23 Defendant.

24 CASE NO. 1:23-CR-00013-ADA-BAM  
25 STIPULATION REGARDING EXCLUDABLE  
26 TIME PERIODS UNDER SPEEDY TRIAL ACT;  
27 ORDER  
28 DATE: March 8, 2023  
TIME: 1:00 p.m.  
COURT: Hon. Barbara A. McAuliffe

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1 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
 2 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
 4 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally  
 7 or in writing").

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 10 justice continuances are excludable only if "the judge granted such continuance on the basis of his  
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 12 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 13 unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 15 and the defendant in a speedy trial." *Id.*

16 The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code  
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 20 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 21 recognized that the eruption created "appreciable difficulty" for the trial to proceed. *Id.* at 767-69; *see*  
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 23 following the September 11, 2001 terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, "appreciable difficulty" to the prompt  
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a "non-  
 26 exhaustive" list of seven factors it found to be "relevant" in considering ends-of-justice Speedy Trial Act  
 27 continuances "in the context of the COVID-19 pandemic." *United States v. Olsen*, --- F.3d ---, 2021 WL  
 28 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked  
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a  
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;  
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;  
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding  
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*  
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
11 “specifically limited in time”).

## 12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
14 through defendant's counsel of record, hereby stipulate as follows:

15 1. By previous order, this matter was set for status conference on March 8, 2023.

16 2. By this stipulation, defendant now moves to continue the status conference until  
17 September 27, 2023, and to exclude time between March 8, 2023, and September 27, 2023, under 18  
18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case  
21 includes investigative reports, numerous photographs and videos, cellular phone extractions, and  
22 other investigative materials. This discovery has been either produced directly to counsel and/or  
23 made available for inspection and copying.

24 b) Counsel for defendant desires additional time to consult with his client, conduct  
25 further investigation, review the discovery, prepare for a possible trial, and continue to explore a  
26 potential resolution of the case.

27 c) Counsel for defendant believes that failure to grant the above-requested  
28 continuance would deny her the reasonable time necessary for effective preparation, taking into

1 account the exercise of due diligence.

2 d) The government does not object to the continuance.

3 e) Based on the above-stated findings, the ends of justice served by continuing the  
4 case as requested outweigh the interest of the public and the defendant in a trial within the  
5 original date prescribed by the Speedy Trial Act.

6 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
7 et seq., within which trial must commence, the time period of March 8, 2023 to September 27,  
8 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code  
9 T4] because it results from a continuance granted by the Court at defendant's request on the basis  
10 of the Court's finding that the ends of justice served by taking such action outweigh the best  
11 interest of the public and the defendant in a speedy trial.

12 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
13 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
14 must commence.

15 IT IS SO STIPULATED.

16  
17 Dated: February 22, 2023

PHILLIP A. TALBERT  
United States Attorney

18  
19 /s/ JUSTIN J. GILIO

20 JUSTIN J. GILIO  
21 Assistant United States Attorney

22 Dated: February 22, 2023

23 /s/ Nicholas Reyes

24 Nicholas Reyes  
25 Counsel for Defendant  
26 Uriel Sotelo-Patino

## **ORDER**

IT IS SO ORDERED that the status conference is continued from March 8, 2023, to **September 27, 2023 at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: February 27, 2023

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE